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LAW OFFICES

BLOOSTON, MORDKOFKY, JACKSON & DICKENS

2120 L STREET, N.W.

WASHINGTON, D.C. 20037

(202) 659-0830

TELECOPIER: (202) 828-5568

April 22, 1994

HAROLD MORDKOFKY
ROBERT M. JACKSON
BENJAMIN H. DICKENS, JR.*
JOHN A. PRENDERGAST
GERARD J. DUFFY
RICHARD D. RUBINO*
BRIAN D. ROBINSON
SUSAN J. BAHR
JULIAN P. GEHMAN*

ARTHUR BLOOSTON
OF COUNSEL

EUGENE MALISZEWSKYJ
DIRECTOR OF ENGINEERING
PRIVATE RADIO

SEAN A. AUSTIN
DIRECTOR OF ENGINEERING
COMMON CARRIER RADIO

*NOT ADMITTED IN D.C.

WRITER'S DIRECT DIAL NO.

(202) 828-5510

Gail Brown
Private Radio Bureau
Federal Communications Commission
2025 M Street, NW, Room 5002
Washington, DC 20554

MAY 16 1994

Attn: Ralph Haller, Chief - Private Radio Bureau
Chair, PCS Task Force

Re: General Docket No. 90-314

STATEMENT OF MINNESOTA EQUAL ACCESS NETWORK SERVICES, INC.

Dear Ms. Brown:

Minnesota Equal Access Network Services, Inc. ("MEANS"), on behalf of its 57 owner telephone companies, and the 65 member telephone companies served by its network, by its attorneys, hereby submit these comments concerning the panel discussion held on Personal Communications Service (PCS) issues on April 11-12, 1994. This panel discussion related to the Commission's Second Report and Order, 8 FCC Rcd. 7700 (1993), and these comments are filed pursuant to the Commission's News Release, Mimeo No. 42480, released April 4, 1994.

MEANS and its member companies desire to provide PCS services in Minnesota, by using the existing MEANS fiber-based centralized equal access network and tandem switch as the backbone for PCS services. However, MEANS and its member companies, who are rural telephone companies serving sparsely populated areas, may be effectively precluded from doing so by the Commission's cellular ownership restrictions for PCS. These rural telephone companies are in the best position to fulfill the Congressional mandate to bring emerging technologies to rural areas. MEANS accordingly concurs in the request of at least one panelist that the Commission's cellular ownership restriction be eliminated, at least as it applies to rural telephone companies having designated entity status. MEANS also disagrees with remarks at the hearing opposing spectrum set aside for designated entities, and advocates a 30 MHz set aside within the

Commission's existing PCS spectrum allocation.

In support of these comments, the following is shown:

I. INTEREST OF MEANS

MEANS operates a centralized equal access system which serves independent telephone companies throughout rural Minnesota, as authorized by this Commission and by the Minnesota Public Utilities Commission. The MEANS centralized equal access system serves 266 rural telephone exchanges, having approximately 205,000 access lines. The MEANS network includes fiber optic cable linking a tandem switch located in Plymouth, Minnesota, a suburb of Minneapolis, with nine Toll Transfer Points located near all of U S WEST Communications, Inc.'s existing Minnesota access tandems. The MEANS system permits interconnection with interexchange carriers, and provides a platform for the provision of other enhanced services, which require the use of SS7 signaling. Furthermore, the MEANS network is used to provide two-way interactive video services, including distance learning.

This network exhibits promising economics for the deployment of PCS throughout Minnesota, including rural areas. MEANS's centralized switching location in Plymouth provides an existing platform that will avoid the necessity of investing in multiple switches to provide PCS. Moreover, MEANS's statewide fiber network will minimize required investment in special access circuits to connect all sites to each other, and to the switch. In sum, the MEANS network already in place, in combination with PCS, can play an important role in bringing the national "information superhighway" through rural Minnesota.

A number of panelists noted the importance of utilizing existing infrastructure as a way to enhance the viability of PCS, especially in rural areas. E.g., Panel Discussion, Monday, April 11, 1994, Transcript, p. 147 ("Mon. Tr.") (referencing economies of scope). However, MEANS is concerned that the current broadband PCS rules will significantly hinder the introduction of these advanced services to rural Americans, despite Congress' recognition of the importance of this goal.

II. THE CELLULAR OWNERSHIP RESTRICTIONS SHOULD NOT APPLY TO RURAL TELEPHONE COMPANIES

Several panelists urged the Commission to affirm the existing broadband PCS rules because further delay in the auctioning of licenses will severely erode the market value of PCS, since incumbent cellular carriers are racing to implement digital, PCS-type services. See, e.g., Testimony of Tom Stroup of the Personal Communications Industry Association (PCIA), Mon. Tr., pp. 20-25; Elliott Hamilton of

US Wireless Consulting, Mon. Tr., p. 123; Dave Twyber of Northern Telecom, Mon. Tr., p. 126. MEANS agrees wholeheartedly that the PCS auctions should proceed with all due speed. However, MEANS must also agree with panelist Dan Trampush of Ernst & Young (on behalf of the Rural Coalition), that "restrictions on ownership of cellular and PCS would be bad for customers in rural areas." Mon. Tr., p. 44. As Mr. Trampush goes on to state, the best way for PCS to be viable in rural, low population-density areas is to encourage rural telephone companies to maximize the "inter-workability of PCS, cellular and telephone networks," so that economies of scope can be realized. Mon. Tr., p. 44. MEANS is ideally situated to do so, to the lasting benefit of the rural communities served by its members.

In the absence of an exemption from the cellular ownership restriction, many rural telcos will be effectively precluded from participating in PCS by virtue of a minority interest in a cellular license. Many rural telcos cannot exercise control over the cellular system in which they have a minority interest. Many of these carriers are minority partners. It should not be difficult for the Commission to fashion a rule which recognizes the importance of rural telephone participation in PCS, and their longstanding role as one of the only entities with a vested interest in bringing improved telecommunications to their rural service areas. These entities clearly cannot engage in the suppression of PCS competition, which the Commission apparently fears. This will be especially true when up to seven PCS competitors are licensed in a given Basic Trading Area (BTA).¹

The cellular restriction fails to recognize the rural telephone company's role as the carrier of last resort. Many rural carriers are cooperatives, whose owners are the residents of the community. These communities would not seek to thwart PCS, for doing so would only be harming themselves. To the extent that any PCS licensee sees fit to extend service to rural communities, they are likely to target their services to the larger business customers in these areas, leaving rural telcos with only the low revenue residential customers. Without the ability to compete, these rural carriers may be forced out of business, or at least forced to sharply increase prices and curtail services. This result flies in the face of both the universal service goals of Congress and the FCC, and the Congressional mandate to encourage rural telephone

¹ In this regard, Congress would not have designated rural telephone carriers as protected entities in the Omnibus Budget Reconciliation Act of 1993, if it feared that the cellular interests of these carriers (of which Congress was well aware) could be used in an anti-competitive fashion.

participation in PCS, as a means of bringing enhanced services to rural communities.

Accordingly, the FCC should not unnecessarily delay PCS auctions. However, the Commission must take the time to exempt rural telcos from the cellular ownership restriction, so that its Congressional mandate is fulfilled.

PCIA and other members of the panel expressed concern over the loss of market share to cellular carriers, because of regulatory delay. However, Congress has mandated meaningful rural telephone participation, for the important public interest reasons described above. And given the full development of the record in this proceeding, it should not take long for the Commission to revise its rules as needed to fulfill Congress' instructions.

A. Grant of an Exemption for MEANS And Other Rural Telephone Entities Would Be Consistent with Other Commission Decisions Recognizing the Unique Benefits of Centralized Equal Access, And Would be Consistent With Congressional Intent

The Commission should not only exempt individual rural telephone carriers from the cellular restriction, but should likewise extend this benefit to the equal access entities these carriers have formed, and to entities that may be formed looking toward the provision of PCS.

A grant of an exemption from the cellular ownership restriction for MEANS and other centralized equal access providers would be consistent with FCC precedent, and with suggestions by the Office of Technology Assessment of the U.S. Congress ("OTA") and the Aspen Institute for regulatory support for rural networks.

The Commission has repeatedly recognized the unique features of centralized equal access networks. First, in granting Section 214 authority for the construction of these networks, the Commission has recognized the benefits to rural subscribers.² Second, the Commission granted waivers

² See Memorandum Opinion, Order and Certificate (MIEAC), File No. W-P-C-6400, released Aug. 22, 1990 (Commission noting the advantages of competition in the interexchange market which is fostered by equal access networks, and that the MEANS network would bring equal access to a large number of rural subscribers); see also Memorandum, Opinion, Order and Certificate (SDCEA, Inc.), 5 FCC Rcd. 6978, 6981 (Dom. Fac. Div. 1990) ("potential for implementing in rural areas . . . the important Commission goal of making available more competitive, varied, high quality interstate services"); Memorandum Opinion, Order and Certificate (Iowa Network Access Division), 3 FCC Rcd.

of the equal access balloting deadlines for MEANS and other centralized equal access providers in order to permit member companies to coordinate the balloting for the entire systems, although conversions were spread over a range of dates.³ Finally, in the Transport Rate Structure and Pricing proceeding, the Commission exempted centralized equal access providers, and LECs participating in such arrangements, from requirements to provide direct-trunked transport in recognition of their unique network configurations.⁴

These prior Commission decisions have supported the provision of centralized equal access networks as they have, to date, supported primarily wireline telecommunications services. As MEANS looks to the future and mobile telecommunications, MEANS requests the opportunity to use its resources to provide PCS services to Minnesota. However, to do so, MEANS needs federal regulatory policies that would support, rather than prohibit, its entry to PCS. As stated by OTA, "[i]f rural areas are to access advanced communications technologies in an economical fashion, it is critical that policymakers at the . . . Federal level[] think about and plan for such arrangements." Office of Technology Assessment, Rural America at the Crossroads: Networking for the Future 130 (1991). The Aspen Institute similarly encourages policymakers to consider "the larger

1468, 1468 (Com. Car. Bur. 1988) (Commission priority to speed the availability of high quality, varied competitive services to small towns and rural areas), recon. denied, 4 FCC Rcd. 2201 (Com. Car. Bur. 1989); Memorandum Opinion, Order and Certificate (Indiana Switch Access Division), File No. W-P-C-5671, Mimeo No. 3652, released Apr. 10, 1986 (implementing equal access to subscribers who otherwise might be denied the benefits of IXC competition), review denied, 1 FCC Rcd. 634 (1986); Memorandum Opinion, Order and Certificate (Contel of Indiana), 3 FCC Rcd. 4298, 4301 (Com. Car. Bur. 1988) (equal access to be brought about sooner and less expensively, aggregation of access lines will be more attractive to competitive IXCs, and plan will reduce costs to IXCs).

³ Order (NECA: Petition for Waiver of Equal Access Balloting Requirements), 6 FCC Rcd. 4789 (Com. Car. Bur. 1991) (MEANS); Order (NECA: Petition for Waiver of Equal Access Balloting Requirements), 7 FCC Rcd. 2364 (Com. Car. Bur. 1992) (SDN); Order (NECA: Petition for Waiver of Equal Access Balloting Requirements), 4 FCC Rcd. 3949 (Com. Car. Bur. 1989) (INS).

⁴ Report and Order and Further Notice of Proposed Rulemaking (Transport Rate Structure and Pricing), 7 FCC Rcd. 7006, 7049 (1992), modified, 8 FCC Rcd. 5370, 5387 (1993); 47 C.F.R. § 69.112(f).

economic and social context in which modern telecommunications operates, and explore new regulatory approaches that can unleash new applications and benefits that will contribute to economic development." Edwin B. Parker & Heather E. Hudson, Electronic Byways: State Policies for Rural Development Through Telecommunications 80 (1992) (prepared for the Aspen Institute).

Indeed, the basis of an exemption from the cellular restriction rules, for MEANS, would likewise justify an exemption for other rural telephone owned entities that may seek to be PCS licensees. As previously noted, MEANS's member telephone companies hold only minority, non-controlling interests in cellular ownership systems. The notion that such minority ownership interests would enable these companies to exercise market power in cellular or PCS markets, is simply not credible. The fact that there will be multiple PCS licensees, Enhanced Specialized Mobile Radio Service licensees and Mobile Satellite Service providers -- all competing against rural telephone PCS licensees, further undercuts the notion that rural companies could exercise market power, even if they did control rural cellular systems.

As the Commission is well aware, the acquisition of PCS licenses, by auction, and the construction of PCS systems, will be capital intensive undertakings. In order to succeed, it may well require a combination of capital from companies who, in their individual capacity, would be unable to meet these capital requirements. Indeed, the creation of MEANS itself, and the equal access and other benefits of its networks, provide a compelling example of the benefits of rural telephone company consortia.

The Commission can, and should, ensure that Congress' mandate be realized that rural telephone companies participate in PCS. It can do so in part by exempting any rural telephone company owned entity or consortium seeking to provide PCS from the PCS cellular restriction rule.

III. THE COMMISSION SHOULD SET ASIDE 30 MHZ OF PCS FREQUENCY FOR DESIGNATED ENTITIES

MEANS submits that the Commission should set aside 30 MHz of PCS frequency for the Congressionally designated entities. This set aside assumes that the Commission does not depart from its existing PCS allocation scheme. Specifically, MEANS urges the Commission to set aside at least 20 MHz (of the total requested set-aside of 30 MHz) in the lower frequency band. MEANS disagrees with panelist Jerry Hausman, who argues against a set aside for designated entities. Tr. p. 209.

The basis for this request is grounded upon the fact that, without a set aside, all of the large frequency

blocks, and indeed, perhaps all PCS spectrum, will be out of reach for all but the largest bidders. And since these bidders will be allowed to aggregate frequency, the Commission needs to ensure that the spectrum set aside is sufficient to allow designated entities to compete against these large bidders. MEANS respectfully submits that 30 MHz is necessary for this purpose.

CONCLUSION

MEANS submits that it is uniquely situated to integrate PCS into its statewide fiber network, and has already demonstrated its ability and commitment to provide services to rural areas. MEANS thus requests the FCC to consider the benefits to rural Minnesota that would ensue by permitting MEANS and its member companies to offer PCS, and exempt MEANS, other centralized equal access providers and rural telephone company owned entities from the cellular ownership restrictions for PCS licenses. MEANS likewise urges the Commission to set aside 30 MHz of PCS frequency for designated entities.

Respectfully submitted,
**MINNESOTA EQUAL ACCESS NETWORK
SERVICES, INC.**

By: 

Benjamin H. Dickens, Jr.
John A. Prendergast
Blooston, Mordkofsky, Jackson
& Dickens
2120 L Street, N.W., Suite 300
Washington, D.C. 20037
(202) 659-0830
Its Attorneys

Of Counsel:
Ann K. Newhall
Moss & Barnett
4800 Norwest Center
Minneapolis, MN 55402
(612) 347-0300

CERTIFICATE OF SERVICE

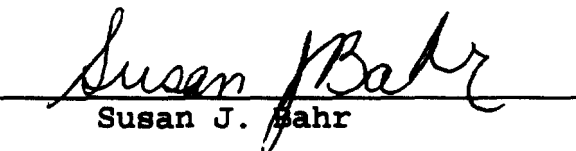
I, Susan J. Bahr, hereby certify that I am an associate at Blooston, Mordkofsky, Jackson & Dickens and that on this 22nd day of April, 1994, I caused to be hand-delivered a copy of the foregoing **"STATEMENT OF MINNESOTA EQUAL ACCESS NETWORK SERVICES, INC."** to the following:

Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Chairman Reed Hundt
Federal Communications Commission
1919 M Street, NW
Room 814
Washington, DC 20554

Commissioner Andrew Barrett
Federal Communications Commission
1919 M Street, NW
Room 844
Washington, DC 20554

Commissioner James Quello
Federal Communications Commission
1919 M Street, NW
Room 802
Washington, DC 20554


Susan J. Bahr